

HOUSE BILL 1872

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 4;  
Title 9 and Title 12, relative to conflict of interest in  
public contracting.

WHEREAS, the Comptroller of the Treasury conducted a performance audit of programs and activities of the Department of General Services for the period of July 1, 2011, through July 31, 2013; and

WHEREAS, the audit concluded that the General Services' Real Estate Management Division entered into a contract that was overly broad in scope and pursued multiple contract amendments to refine the contract scope creating an organizational conflict of interest; and

WHEREAS, a contractor, who offers the state or its agencies advice, should not be permitted to bid and be awarded a contract that would allow the contractor to act on the advice it originally provided to the state or its agencies; and

WHEREAS, Tennessee law, rules, and regulations fail to address actual or potential organizational conflict of interest in state procurements and contracts; and

WHEREAS, the Comptroller's report urged the Commissioner of General Services to review the Federal Acquisition Regulations relating to organizational conflict of interest and to implement best practices in the department's procurement and management of contracts; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new section:

12-4-115.

(a) As used in this section:

(1) "Agency" means each branch, agency, entity, board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute to purchase or contract for goods or services;

(2) "Organizational conflict of interest" means:

(A) When, because of other relationships or circumstances, a contractor may be unable, or potentially unable to render impartial advice or assistance to an agency, the objectivity of the contractor in performing the contract work is or may be impaired, or the contractor would have an unfair competitive advantage;

(B) When circumstances between a contractor and the agency involve:

(i) A potential contractor, subcontractor, employee, or consultant that has worked, in one government contract, or program, on the basic structure or ground rules of another government contract;

(ii) A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) that has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to any agency, or in providing technical assistance or other services to recipients of state funds as part of its contractual responsibility; or

(iii) A potential contractor, subcontractor, employee, or consultant has access to non-public

information through its performance on a government contract; or

(C) When circumstances between a contractor and the agency involve impaired objectivity, which includes, but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(i) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an agency, a person, organization, or institution in the course of implementing any program administered by an agency;

(ii) Significant connections to teaching methodologies or approaches that might require or encourage the use of specific products, property, or services; or

(iii) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, or services.

(b) Each agency of the state shall:

(1) Identify and evaluate actual or potential organizational conflicts of interest before awarding or amending any contract for goods or services; and

(2) Avoid, neutralize, and mitigate actual or potential organizational conflicts of interest before awarding or amending any contract for goods or services.

(c)

(1) A contract entered into or amended in violation of this section is void.

(2) A contract that is otherwise void under subdivision (c)(1) may continue in effect at the discretion of the comptroller of the treasury until an alternative can be arranged when:

(A) Immediate termination would result in harm to the public health or welfare; and

(B) The continuation is approved by the comptroller of the treasury.

(3) Approval of continuation of contracts under this subsection (c) shall be given for the minimum period necessary to protect the public health or welfare. The chief procurement officer and the comptroller of the treasury shall be notified immediately upon a determination that a contract violates this section.

SECTION 2. This act shall take effect July 1, 2014, the public welfare requiring it and shall apply to all contracts entered into or renewed on or after such date.